

SERVICE DATE – LATE RELEASE JUNE 9, 2017

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 290 (Sub-No. 389X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT
EXEMPTION—IN ROANOKE, VA.

Decided: June 9, 2017

Norfolk Southern Railway Company (NSR) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon an approximately 0.5-mile line of railroad, between mileposts R 4.0 and R 4.5, in Roanoke, Va. Notice of the exemption was served and published in the Federal Register on March 23, 2017 (82 Fed. Reg. 14,938). The exemption was scheduled to become effective on April 22, 2017, unless stayed by the Board or a formal expression of intent to file an offer of financial assistance (OFA) under 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27(c)(2) was filed by April 3, 2017.

On April 13, 2017, Thoroughbred Energy & Environmental Corporation (Thoroughbred) filed a late notice of intent to file an OFA. After issuing a housekeeping stay and considering additional filings from both NSR and Thoroughbred, the Board accepted Thoroughbred's late-filed notice of intent and lifted the housekeeping stay. Norfolk S. Ry.—Aban. Exemption—in Roanoke, Va., AB 290 (Sub-No. 389X) (STB served May 5, 2017). In addition, the Board set May 25, 2017, as the deadline for Thoroughbred to file an OFA and set June 4, 2017, as the effective date of the abandonment exemption. On May 22, 2017, Thoroughbred filed a request to toll the deadline to file an OFA for 14 business days, until June 14, 2017, and on May 23, 2017, NSR replied in opposition to Thoroughbred's request. On May 25, 2017, the Board extended the date to file an OFA until June 1, 2017, and extended the effective date of the abandonment exemption to June 11, 2017. On June 1, 2017, Thoroughbred informed the Board that it would not submit an OFA.¹

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) on March 28, 2017. In the EA, OEA states that the U.S. Fish and Wildlife Service, Virginia Ecological Services Field Office (USFWS), submitted comments stating that

¹ Thoroughbred suggests that the City of Roanoke, Va. (Roanoke) plans to acquire the right-of-way from NSR for use as a trail, and the Board should require NSR and Roanoke to follow the Board's process established under the National Trails System Act. (Thoroughbred Letter 3, Apr. 24, 2017.) However, that program is voluntary and consensual between the railroad and the potential trail sponsor, see Rail Abans.—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 598 (1986), and no interim trail use requests have been filed. Therefore, the Board cannot impose a trail use condition.

one federally listed threatened or endangered species, the Roanoke logperch, might be located in the area of the proposed abandonment. Accordingly, OEA recommended that a condition be imposed requiring NSR to consult with USFWS to determine whether any further review is necessary under the Endangered Species Act.

Further, OEA states that the U.S. Army Corps of Engineers, Norfolk District (the Corps) commented that the proposed abandonment would not require a Section 404 permit. The Corps also suggested that NSR consult with the Wilmington District, Flood Risk Management Program for the Upper Roanoke River. Accordingly, OEA recommends that a condition be imposed requiring NSR to consult with the Corps' Wilmington District, Flood Risk Management Program for the Upper Roanoke River.

Comments to the EA were due by April 11, 2017. In a final EA issued on April 13, 2017, OEA states that a comment was received from the Delaware Nation and that it concurs with the proposed abandonment. On April 18, 2017, the Board received a late environmental comment from David L. Foster. Mr. Foster commented that piles of black waste from a nearby foundry are located in the right-of-way of the proposed abandonment and suggested that environmental remediation may be required. Accordingly, in a supplemental final EA issued on April 20, 2017, OEA recommends that NSR consult with the Virginia Department of Environmental Quality (VDEQ) to address citizen concerns regarding black foundry waste located in the right-of-way of the proposed abandonment. On May 8, 2017, OEA received a phone call from USFWS regarding the USFWS condition recommended in the EA. After consultation with USFWS, OEA determined that the proposed abandonment would not adversely affect the Roanoke logperch because NS indicates in its Environmental Report that it has no plans to undertake any in-stream work, dredge, or use any fill materials in connection with the proposed abandonment. Therefore, in a second supplemental final EA issued on May 9, 2017, OEA indicates that it no longer recommends any mitigation related to biological resources.

For the reasons discussed above, the conditions recommended by OEA in the final EA, as modified in the first and second supplemental final EAs, will be imposed.

Based on OEA's recommendations, the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice served and published in the Federal Register on March 23, 2017, exempting the abandonment of the line described above is subject to the conditions that, prior to commencement of any salvage activities, NSR shall consult with: (1) the Corps' Wilmington District, Flood Risk Management Program for the Upper Roanoke River and (2) VDEQ to address citizen concerns regarding black foundry waste located in the right-of-way of the proposed abandonment.

3. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.